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8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF CALIFORNIA
10 SACRAMENTO DIVISION

11 In re:
12 KOBRA PROPERTIES, a
13 California general partnership et
al.,
14 Debtors.

CASE NO.: 08-37271-C-11

Chapter 11

Jointly Administered

DCN: FWP-23

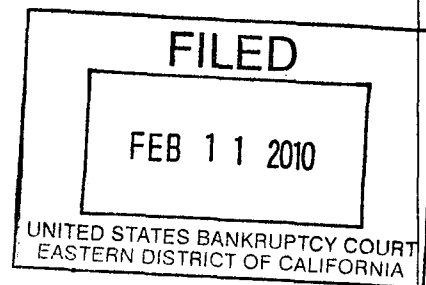
Date: January 14, 2010
Time: 2:00 p.m.
Judge: Honorable Christopher Klein
Courtroom: 35, Department C

18 ORDER AUTHORIZING AND APPROVING (1) SALE OF PROPERTY AT
19 FOOTHILLS BOULEVARD AND JUNCTION BOULEVARD, ROSEVILLE,
CALIFORNIA FREE AND CLEAR OF CERTAIN LIENS, CLAIMS, AND
20 ENCUMBRANCES, (2) PAYMENT OF UNDISPUTED OR COMPROMISED LIENS
AND (3) RELATED RELIEF

21 [PROPERTY NUMBER A-6]

22 On October 20, 2009, Steven L. Victor, as Trustee (the "Trustee") of the Chapter 11 estate
23 of Kobra Properties, a California general partnership ("Debtor"), filed the Chapter 11 Trustee's
24 Motion for the Entry of Orders (I) Approving Sale Procedures with Respect to the Sale of Real
25 Property and Overbid Procedures, Including Break-Up Fee Relating Thereto, (II) Authorizing the

26
27 ¹ The Debtors in these jointly administered bankruptcy cases are: Kobra Properties, a California
28 general partnership, Kobra Preserve, LLC, a California limited liability company, Vernon Street
Associates, LLC, a California limited liability company, and Rocky Ridge Center, a California
limited liability company.



Order Approving Sale of Real Property
[Foothills Blvd./Junction Blvd.]

1 Sale of Real Property Free and Clear of All Liens, Claims, and Encumbrances Pursuant to Section
2 363 of the Bankruptcy Code, and (III) Authorizing the Sale by Auction of Additional Real
3 Property (the "Sale Motion"), seeking entry of orders approving certain sale procedures and
4 related relief regarding twenty-four (24) separate real property assets and improvements thereon
5 owned by the Kobra Properties Chapter 11 estate (the "Estate"). Included among the assets to be
6 sold is real property and improvements thereon commonly known as Foothills Boulevard and
7 Junction Boulevard, Roseville, California, Placer County APN 476-190-005 (the "Transferred
8 Assets"). In the Sale Motion, the Trustee requested that the relief sought in the Sale Motion be
9 granted on a bifurcated basis, such that the Court first approve the sale procedures, including
10 auction and bidding procedures, and determine that the Transferred Assets may be sold free and
11 clear of certain liens, claims, and encumbrances, and that the Court schedule a post-auction final
12 hearing (the "Sale Return Hearing") for the Court to consider all other requested relief, including
13 approval of the sale of the Transferred Assets to the successful bidder.

14 On December 9, 2009, the portion of the Sale Motion regarding the Trustee's request for
15 approval of sale procedures came before the Court. Following consideration of all filed
16 documents and arguments made by counsel at such hearing, and for the reasons stated by the
17 Court during the course of such hearing, the Court overruled all objections and entered its Order
18 (I) Granting Trustee's Modified Motion for Order Approving Real Property Sale Procedures
19 Including Sale by Auction, (II) Authorizing the Sale of Real Property Free and Clear of Certain
20 Liens, Claims, and Encumbrances Pursuant to Section 363 of the Bankruptcy Code, and (III)
21 Scheduling Sale Return Hearing on January 6, 2010 (the "Procedures Order"). The Procedures
22 Order approved the sale procedures (the "Sale Procedures"), scheduled the auction (the
23 "Auction") for January 14, 2010, at 9:30 a.m., and scheduled the Sale Return Hearing for January
24 14, 2010, at 2:00 p.m.

25 Thereafter, on January 14, 2010, after the Court called the Auction to order and presided
26 over a review of qualified bidders and opening bids, the Trustee conducted the Auction for the
27 sale of the Transferred Assets, consistent with the Procedures Order.

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1 On January 14, 2010, at 2:00 p.m., the Sale Return Hearing was held following due and
2 adequate notice. Donald W. Fitzgerald of Felderstein Fitzgerald Willoughby & Pascuzzi LLP
3 appeared on behalf of the Trustee and all other appearances were noted on the record.

4 Based upon the Sale Motion and evidence filed in support of the Sale Motion and other
5 relevant documents filed in connection with the Sale Motion, including the record in this case and
6 the supplemental declaration of the Successful Bidder (as defined below), and all objections to the
7 Sale Motion having been withdrawn or overruled, and the Court having made its findings of fact
8 and conclusions of law on the record, and for good cause shown,

9 IT IS HEREBY ADJUDGED AND ORDERED that:

10 1. The Sale Motion shall be and is hereby granted with respect to the Transferred
11 Assets in accordance with the terms of this Order, to the extent not previously granted pursuant to
12 the terms of the Procedures Order.

13 2. Devinder Sahota is approved as the successful bidder (the "Successful Bidder") for
14 the Transferred Assets with the high qualified bid of \$325,000.

15 3. The terms, conditions, and transactions contemplated by the Asset Purchase
16 Agreement entered into between Trustee and Successful Bidder dated as of January 14, 2010 (the
17 "APA"), which is substantially in conformance with the approved form of Asset Purchase
18 Agreement submitted in support of the Sale Motion, are approved in all respects and the sale of
19 the Transferred Assets pursuant to the APA is hereby authorized under the provisions of Sections
20 363(b), (c), (f), and (m) of the Bankruptcy Code.

21 4. Pursuant to Section 363(b) of the Bankruptcy Code, the Trustee is authorized and
22 empowered to fully perform under, consummate, and implement the APA and to take all actions
23 reasonably required to fulfill his obligations under the APA, including without limitation
24 executing all documents in connection with the sale transaction approved by this Order.

25 5. As previously determined in the Procedures Order, the sale of the Transferred
26 Assets shall be free and clear of the following liens, claims, encumbrances, or other interests
27 pursuant to Bankruptcy Code Section 363(f):

28 ///

1 a. Any unrecorded lien, encumbrance, and/or equitable or legal interest in the
2 Transferred Assets asserted by any person or entity, or their respective predecessors and
3 successors in interest, unless otherwise expressly provided for by this Order;

4 b. Any recorded lien, encumbrance, and/or equitable or legal interest in the
5 Transferred Assets not otherwise expressly provided for by this Order and asserted by any person
6 or entity, or their respective predecessors and successors in interest, who have received notice of
7 the Motion; and

8 c. The claims or interests asserted by any person or entity, or their respective
9 predecessors and successors in interest, against the Estate which do not constitute liens against or
10 interests in the Transferred Assets.

11 6. The Trustee is authorized and directed to pay through escrow directly from the sale
12 proceeds all amounts due or necessary to satisfy the following obligations as of the closing date
13 under the APA, which are secured by the following liens and encumbrances:

14 a. All real property taxes and assessments pro rated as of the closing date, in
15 the approximate amount of \$41,510, as shall be finally approved by the Trustee through escrow.

16 b. The deed of trust on the Transferred Assets in favor of Mechanics Bank, in
17 the compromised amount of \$189,885.72 through and including January 12, 2010, plus accrued
18 interest at the rate of \$40.85 per day from and after January 13, 2010 until the closing of the sale,
19 as shall be finally approved by the Trustee through escrow.

20 7. Mechanics Bank shall, through escrow and as a condition to receipt of payment,
21 submit for recording an appropriate reconveyance of its deed of trust and release of any other
22 liens encumbering the Transferred Assets.

23 8. The Trustee is authorized to pay through escrow all other items, if any, payable at
24 closing by the Trustee, as seller, including any closing costs and related fees and expenses, in
25 accordance with the terms of the APA. All net proceeds of sale shall be paid over to the Trustee
26 on behalf of the Estate at close of escrow.

27 9. The provisions of this Order regarding the sale of the Transferred Assets free and
28 clear of liens and claims shall be self-executing, and neither the Trustee, the Successful Bidder,

1 nor any third party shall be required to execute or file releases, termination statements,
2 assignments, consents, or any other instruments in order to effectuate, consummate, and
3 implement the release provisions of this Order, except as provided in the APA. Upon the closing
4 date, any and all financing statements, judgments, liens, and mortgages filed of record, or any
5 other documents evidencing any of the Section 363(f) interests shall automatically be discharged,
6 terminated, and released, and of no force or effect as to the Transferred Assets.

7 10. The APA and any related agreements, documents, or other instruments may be
8 modified, amended, or supplemented by the parties thereto in accordance with the terms thereof
9 without further order of this Court, provided that any such modification, amendment, or
10 supplement is designed to conform the APA to the Auction results or is otherwise not materially
11 adverse to the interests of the Chapter 11 Estate.

12 11. The Court having concluded that the Successful Bidder is a good faith purchaser
13 under Section 363(m) of the Bankruptcy Code, the sale of the Transferred Assets to the
14 Successful Bidder and the purchase of the Transferred Assets by the Successful Bidder constitute
15 a sale and purchase in good faith and for fair value within the meaning of Section 363(m) of the
16 Bankruptcy Code and the parties to the APA and their assignees are entitled to all of the
17 protections afforded by Section 363(m) of the Bankruptcy Code.

18 12. Family Real Property Limited Partnership is approved as the back-up bidder (the
19 "Back-Up Bidder") with a qualifying bid for the Transferred Assets in the amount of \$315,000.
20 If the Successful Bidder fails to consummate the sale according to the terms of the APA and this
21 Order on or before the outside closing date of February 17, 2010, or such later date as may be
22 approved either by the parties to the APA and the Back-Up Bidder, or by court order, the Trustee
23 is authorized to consummate the sale to the Back-Up Bidder consistent with the Sale Procedures
24 without further order of this Court. Such sale to the Back-Up Bidder shall be pursuant to the
25 terms and conditions of the Asset Purchase Agreement for the Transferred Assets executed by the
26 Back-Up Bidder, and otherwise on the same terms and conditions as set forth in this Order

27 13. Should the Successful Bidder fail to consummate the sale because of a breach or
28 failure to act on the part of the Successful Bidder, the good faith deposit of the Successful Bidder

1 shall be forfeited to the Trustee, and Trustee shall retain the right to seek any and all other
2 remedies and damages as may be provided for in the APA.

3 14. The provisions of Federal Rule of Bankruptcy Procedure 6004(h) are hereby
4 waived so that this Order shall be effective and enforceable immediately upon entry.

5 15. This Court shall retain jurisdiction to hear and determine all matters arising from
6 the interpretation and implementation of this Order.


7 APPROVED BY:

8 PARKINSON PHINNEY

9
10 By: _____
11 Thomas A. Phinney
Attorneys for the Official Committee of
Unsecured Creditors

12 JEFFER, MANGELS, BUTLER &
13 MARMARO, LLP

DOWNEY BRAND LLP

14 By: 
15 Brian A. Bobb
Counsel for Mechanics Bank

16 By: _____
17 R. Dale Ginter
Attorneys for Abe and Kobra Alizadeh

18 FEB 11 2010
19 Dated: _____

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21 UNITED STATES BANKRUPTCY JUDGE

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10 Thomas A. Phinney
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15 Counsel for Mechanics Bank

16 By: R. Dale Ginter
17 Attorneys for Abe and Kobra Alizadeh

18 Dated: _____
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20 UNITED STATES BANKRUPTCY JUDGE
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17 By:  _____
18 R. Dale Ginter
19 Attorneys for Abe and Kobra Alizadeh

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UNITED STATES BANKRUPTCY JUDGE